

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9140 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PARAGBHAI DHANABHAI VANKAR

Versus

PRESIDENT, GUJARAT STATE BIJ NIGAM LTD.

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Appearance:

MR JK PARMAR for Petitioner

SERVED for Respondent No. 1, 3

MR JR NANAVATI for Respondent No. 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/06/97

ORAL JUDGEMENT

The petitioner, a former employee of the respondent-Corporation (hereinafter referred to as the Corporation) challenges the order of dismissal from service made on 16th May, 1994. The petitioner's appeal against the said order to the Board of Directors, has

also been dismissed.

2. The disciplinary action was initiated against the petitioner by issuing a chargesheet on 14th March, 1993. The said chargesheet was issued in respect of the petitioner's absence for 1415 days without leave during his service tenure from the year 1985 to 1992; the petitioner's transferring the residential quarter allotted to him by the Corporation to an unauthorized person; and for petitioner's claiming Leave Travel Concession for the block period of 1985-1988 and 1988-1992 for his nephew and niece, to which he was not entitled. Pursuant to the said chargesheet, a departmental inquiry was held against the petitioner. The Inquiry Officer submitted his report on 3rd February, 1994. The Inquiry Officer recorded a finding that inspite of various warnings, censures and a minor punishment imposed upon the petitioner, the petitioner had remained absent without leave for as many as 1415 days during his service tenure of 14/2 years. The Inquiry Officer held that the petitioner's subletting his residential accommodation had not been proved, however, the petitioner's transferring the said accommodation to an unauthorized person was held to be proved. He further held that the petitioner had erroneously claimed Leave Travel Concession for his nephew and niece to which he was not entitled, however, the same was not claimed by suppressing the true facts. The Inquiry Officer held that though the petitioner was not entitled to such Leave Travel Concession, the same was allowed by the Corporation without properly verifying the petitioner's claim. In view of the nature of charges proved against the petitioner, the petitioner has been visited with a punishment of dismissal from service.

3. It is contended on behalf of the petitioner that earlier also the petitioner was visited with a minor punishment of withholding of increments for remaining absent without leave and therefore the impugned order amounts to double punishment for the same misconduct. The petitioner has, thus, suffered double jeopardy at the hands of the Corporation. It is also contended that the petitioner during his absence had permitted his brother to live in his residential quarter with a view to looking after his children who were residing there and therefore the petitioner can not be said to have transferred the residential quarter to an unauthorized person. It is further contended that the punishment of dismissal from service is too harsh and is not commensurate with the gravity of misconduct alleged against the petitioner.

3. On perusal of the Appendix to the inquiry report (Annexure-B to the petition), it appears that the petitioner is in habit of remaining absent without leave. Earlier, in this respect, several memoranda, warnings and reprimandations have been issued to the petitioner for such absence. Once the petitioner has also been visited with a minor punishment. The petition is however not clear when such punishment was imposed and for which particular period of absence such punishment is imposed. In absence of such detailed material, it can not be said that the petitioner has been twice visited with punishment for the same misconduct. The petitioner appears to be an incorrigible employee and inspite of various reminders and reprimandations he had been in habit of remaining absent without leave. Such an act can not be said to be conducive to the administrative discipline and can not be viewed lightly. The petitioner's defence that his brother was residing in his residential quarter during his absence has not been believed. It is recorded that the said residential quarter was occupied by one Shri Maganbhai Parmar and not by Shri Maganbhai Vankar who happens to be the brother of the petitioner. This court, while exercising its power of judicial review, would not venture to reappreciate the evidence and would not interfere with the findings recorded by the Inquiry Officer. In that view of the matter, it must be believed that the petitioner did permit an unauthorized person to reside in the residential quarter allotted to him. As far as the unlawful claim for Leave Travel Concession is concerned, it appears that the petitioner claimed Leave Travel Concession for his nephew and niece, which he ought not to have made. However, the said claim had not been made by suppressing the correct facts. If the petitioner claimed Leave Travel Concession to which he was not entitled, it was the duty of the Corporation to scrutinize his application and sanction only the amount to which the petitioner was entitled. Thus, in my view, the petitioner can not be said to have committed a grave misconduct by claiming Leave Travel Concession to which he was not entitled to as is contended on behalf of the Corporation.

5. The petitioner has not been able to establish any infirmity in the disciplinary proceedings held against him. Further, considering the petitioner's long absence from service and considering that other charges have also been partially proved, the order of dismissal made against the petitioner, can not be said to be too harsh or not commensurate with the gravity of guilt established against him. Besides, this court exercising its

extra-ordinary jurisdiction shall interfere with the punishment imposed upon a delinquent, which the disciplinary authority is competent to impose, inless it is too harsh and unconscienable. Petition is therefore dismissed. Rule is discharged. There shall be no order as to costs.

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JOSHI